IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

L.P.A.No. 310 of 2004
in
Writ Petition No. 6935 of 2002

Shri Navnath Rajaram Nagane ..Appellant

vs.

Shri Subhash P.Shinde ..Respondent

Mr.S.N.Deshpande for appellant
Mr.S.D.Patil for respondent

CORAM: A.P.SHAH
& S.U.KAMDAR JJ.
6th August,2004

P.C.

1. This appeal filed by the employee is directed against the order of the learned single Judge declining to interfere with the orders passed by the Labour Court/Industrial Court dismissing the complaint filed by the employee under M.R.T.U.and P.U.L.P.Act, 1971 on the ground that he is not a "workman" within the meaning of sec.2(s) of the Industrial Disputes Act, 1947.

2. The facts leading to this appeal are that the appellant was working in dairy farm of the respondent for nearly 30 years and his services were orally terminated by the employer in October 2000. The appellant challenged the termination order by filing Complaint (ULP) No.53 of 2001

before the Labour Court, Thane. The respondent opposed the complaint on the ground that the appellant was working as a "manager" and, therefore, he is not a workman within the meaning of sec.2(s) of the Industrial Disputes Act, 1947. In view of the rival contentions the Labour Court framed a preliminary issue as to whether the appellant is a "workman" within the meaning of sec.2(s) of the Industrial Disputes Act, 1947 and answered the issue against the appellant and dismissed the complaint. Revision preferred by the appellant before the Industrial Court was also dismissed. The appellant then preferred a writ petition which came to be dismissed in limine by the learned single Judge.

3. The question that arises for consideration is whether in the facts and circumstances of the case, the lower Courts were right in holding that the appellant is not the workman within the meaning of sec.2(s)a of the Industrial Disputes Act, 1947.

4. Mr.Deshpande, learned Counsel appearing for the appellant, strenuously contended that the appellant was performing multifarious duties which came within the purview of definition of expression "workman" within the meaning of sec.2(s) of the

Industrial Disputes Act and the nomenclature of "Manager" was of no consequence. Mr.Deshpande submitted that having regard to the nature of business and also having regard to the fact that there were only 5 employees in the establishment of the employer, it is impossible to believe that the appellant was discharging the function of "Manager" and evidence on record clearly suggests that the appellant was not discharging any managerial or supervisory duty. The learned Counsel urged that assuming that few jobs were allotted to the appellant which were in the supervisory nature, the said jobs were not the main work of the appellant as disclosed by evidence on record and in such circumstances it would be totally erroneous to take a view that the appellant was not a workman within the meaning of sec.2(s) of the Act.

5. On the other hand, Mr.Patil, learned Counsel for the respondent, submitted that the courts below have adverted to the entire evidence on record as a whole and on analysing the same has taken a view that the appellant was not a workman but was working as manager in the establishment. He also highlighted that appellant has categorically admitted that he was promoted as manager of the establishment.

6. It is well settled position of law that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the disputes as to the real nature of duties and functions being performed by an employee in all cases. Therefore designation of an employee is not of much importance and what is important is the nature of duty being performed by the employee. In other words, what is in substance the work which the employee does or what is substance he is employed to do so. The lower Courts have carefully scanned the evidence on record and have come to the conclusion that the appellant was discharging the function of a manager. The employer has clearly deposed that whenever milk was received in dairy the appellant as a manager used to check the quality of milk as a manager and he used to distribute the work in the dairy and consider the leave applications of other employees working in the establishment. This version of the employer

has not been denied nor challenged in the cross examination. The employer has produced on record the muster roll and charge register and they have been in the hand writing of the appellant and has signed by the appellant as a manager of the establishment. The receipt books and bill books written by the accountant are also countersigned by the appellant. It has also come on record that the salary of the complainant was almost double than the salary paid to the other workers and separate cabin was provided to him. In the light of this evidence the lower Courts have come to the conclusion that the appellant is not workman within the meaning of the Act. It is not possible to reappreciate the evidence to take another view merely because such a view was also possible as contended by the appellant.

7. In our opinion, there is no infirmity in the conclusions drawn by the courts below on the question of facts as to whether the appellant was working as a Manager. No fault can be found with the approach of the lower Courts. In the result the appeal is dismissed. No order as to costs.